

### **Remarks and Interview Summary**

Thank you for your continued work in connection with this application. The amendments are discussed in conjunction with the interview summary.

The claims are amended as noted. Text additions are underlined and text deletions are indicated by strike out marks or double brackets. The amendments will be discussed below.

On August 23, 2007 a telephonic interview was conducted with respect to this application. Present for the interview were Examiners Jyoti Chawla and Keith Hendricks and John E. Munger, attorney for Applicants. U.S. Patent Nos. 5,759,609 (Lynch) and 6,372,280 (Gonsalves) were discussed. Applicants' December 22, 2006 Amendment and the declaration of Thomas A. Konar provided with the Amendment were also discussed. Independent claims 45, 49, 17, 26 and 28 (the five independent claims) were discussed as was dependent claim 30.

In summary, Mr. Munger stated that the arguments and experimental information presented in the December 22, 2006 Amendment overcame all claim rejections and rebutted the Office's assertion that Applicants' claims were obvious under 35 U.S.C. § 103(a). Mr. Munger stated that the experimental information provided in the Konar declaration demonstrated that it was inappropriate for the Office to seek to modify Lynch to have a fat content greater than that allowed in Lynch. Because the data show that Lynch cannot be modified as has been done by the Office, the entire basis for the claim rejections must fail and the claims must be allowed.

The Examiners expressed recognition that the information provided in the Konar declaration rebutted the claim rejections and that the rejections may have to be withdrawn. No agreement was reached with respect to allowance of the claims, however, so that the Applicants could address the issues which follow.

The first issue involved a request that Applicants clarify the claims, specifically with respect to the fact that the claims were said to be directed to compositions, yet included a package as a claim element. It was thought that the claims as submitted December 22, 2006 were sufficiently clear in that the combination of a composition and pressurized container was being

claimed.

In response, however, Applicants have amended independent claims 45, 49, 17, 26 and 28 to describe the claimed subject matter as a packaged butter-flavored topping product which includes both the composition and the pressurized container. Dependent claims 12-15, 21-24, 27, 29, 30, 45, 46, and 49 are amended for consistency with the base claims where constituents of the topping composition portion of the product are discussed. The vast majority of the amendments in this paper relate to this modification.

In addition, claim 49 is clarified to state the emulsifier content in terms of the overrun provided. Support is found in the Application at page 9, lines 28-30. A specific protein requirement is deleted from claim 49. Claim 55 is adjusted for consistency with claim 49.

Claims 17, 26, 28, 45, 49, and 59 are amended to include the word “topping” solely for consistency with the composition referenced and claim 59 includes other words as noted for consistency with the base claim.

The amendments presented herein do not represent a substantive change over the December 22, 2006 amendments as the amendments merely clarify the December 22 amendments. Accordingly, it is not believed that further searching is necessary or appropriate.

The second issue involved a request for an explanation as to why Lynch is inoperative at fat contents over 7% as demonstrated in the Konar declaration. In fairness, this would be a question better directed to Mr. Lynch because he is presumably more knowledgeable than Applicants about his composition. What Applicants showed is that Lynch is inoperative when made to include a fat content within the range claimed by Applicants, thereby showing that Lynch could not be modified to provide a basis for rejecting Applicants' claims. Without wishing to be bound by any particular theory, our best explanation with respect to why Lynch does not work at fat contents over 7% is that Lynch's fat and sugar may be crystalizing, particularly when the modified Lynch composition is refrigerated. Such crystallization could explain why the modified forms of Lynch congeal and do not come out of the pressurized

container and could further explain why Lynch's required overrun is lost. However, there may be other factors at work because foams are complex.

The final issue involved a request to check the math regarding the fat content of claims 17, 28, and 30. Regarding independent claim 17, and independent claim 28, the fat content is about 13 to 16% by weight. Accordingly, the weight percentages of the other constituents must be selected to provide a fat content consistent with this range. Ms. Chawla is correct that the fat content would be about 11% (i.e. 10.78%) if the minimum amounts of milk and cream were used. However, it is respectfully submitted that the milk and cream must be selected to provide a fat content meeting the stated range so claims 17 and 28 are believed to be correct as stated. Please note that the claimed fat content and overrun values exceed Lynch and please further note that Lynch does not include milk and heavy cream.

It is believed that all issues raised at the Interview have now been addressed and resolved.

#### **Request for Interview**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue, the Examiner is kindly **requested to call** the undersigned at the telephone number listed below before issuing a further office action.

In re Patent Application of:  
Allen C. Buhler et al.  
Serial No. 10/646,609

Page 18 of 18

Applicants hereby petition for any extension of time which may be required to maintain the pendency of this case. The Commissioner is authorized to debit deposit account 10-0270 to pay for any amounts due in connection with this paper, except the issue fee. Kindly notify the undersigned in the event that the deposit account is debited or credited.

Respectfully submitted,

By: John E. Munger  
John E. Munger  
Registration No. 37,685

Jansson Shupe and Munger, Ltd.  
245 Main Street  
Racine, Wisconsin 53403-1034  
(262) 632-6900  
Atty. Docket No.: BUTR-101US

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to: MAIL STOP AMENDMENT, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 on September 20, 2007.

John E. Munger  
Name

John E. Munger      SEPTEMBER 20, 2007  
Signature      Date